

HTCI COOPERATIVE AGREEMENT NOTICE QUESTIONS AND ANSWERS*

26 FEBRUARY 2001

1. QUESTION

Concerning Appendix C - The second paragraphs of Sections 1, 2, and 3 on pages C-2, C-5, and C-22 respectively of the subject CAN appear to indicate that there are cost limitations on what a proposer may propose for cost matching purposes in each of the three categories. Is this how proposers should interpret these paragraphs? It appears that the aforesaid references are the only references to these cost limitations contained within the CAN. If a proposal should exceed the amounts indicated in Appendix C, will their proposals automatically be removed from consideration for purposes of evaluation as non-compliant?

ANSWER:

The second paragraphs in Sections 1, 2 and 3 of Appendix C of the HTCI CAN provide statements of limitations on total government funding for any particular proposal in each of the three categories. There is no lower limit. Also, no upper limit is implied concerning the resources that a non-NASA organization may propose as cost-sharing. The total value of a proposal should consist of the total government funding PLUS the total non-NASA cost-sharing.

For example, a non-profit organization might propose a systems analysis activity with a total value of \$400,000 over two years, consisting of \$200,000 in total funding from NASA plus \$200,000 in total allowable resources contribution from non-NASA sources. In another example, a for-profit organization might propose a HEDS-enabling advanced research and technology development activity with a total value of \$2,500,000 over two years, consisting of \$1,000,000 in total funding from NASA plus \$1,500,000 in total allowable resources contribution from non-NASA sources.

Proposals that exceed the upper limits for government funding will be assessed on a case-by-case basis during the evaluation. In no case will NASA funding in excess of the stated upper limits actually occur in any selected and successfully negotiated project.

Please refer to information provided elsewhere concerning what types of resources are allowable for contribution under the HTCI.

* Including any needed clarifications of points raised during the February 9th, 2001, HTCI CAN Pre-Proposal Conference.

2. QUESTION

Concerning Page 1 of CAN, Last Paragraph on the Page, Notice of Intent (NOI) – The words “from all organizations planning to submit proposals” utilized in this paragraph should be interpreted to mean that only the lead proposer is required to submit a NOI, not their collaborators or members of a consortium, if any. Is this a correct interpretation of the words?

ANSWER:

Yes. Only the lead proposer is required to submit an NOI.

3. QUESTION

Concerning Page 2 of CAN, First Paragraph on the Page, First Sentence – Please provide further definition/clarification of what the words “...consisting primarily of Government personnel will evaluate the proposals...” would encompass. Proposers would have some concern as to the makeup of the team including individuals who are not employees of the Government, due to the proprietary nature of some information that may be submitted or referred to in the proposal(s). Would the non-Government members of the teams be willing to execute Proprietary Information Agreements with proposers to protect the proposer’s proprietary interests?

ANSWER:

All members of the HTCI evaluation panels will be required to sign appropriate non-disclosure and non-conflict-of-interest forms prior to the evaluation process; this includes any potential non-Government members of the evaluation teams.

4. QUESTION

Concerning each of the three categories of activities requires a separate proposal: should we assume that if a proposer submits proposals in all three categories, and each of their proposals is selected for implementation, a separate cooperative agreement will be entered into with regard to each proposal, since the lead proposer's collaborators may vary for each specific proposal? Or will NASA attempt to combine all of the selected proposal's efforts from a single lead proposer into one cooperative agreement?

ANSWER:

It is expected that the principal investigators and/or NASA collaborating Field Centers will likely differ from proposal to proposal for an offeror making several proposals. NASA does not intend to combine all of the selected proposals from a particular non-NASA organization into a single cooperative agreement for negotiation: it is anticipated that a separate cooperative agreement will result from each proposal offered in response to the HTCI CAN.

5. QUESTION

Concerning Appendix A, Paragraph 2 “HTCI Education/Public Outreach (E/PO)” – Can the proposers assume that due to the page restrictions that NASA has imposed for the “Project Description,” and the fact that a detailed separate E/PO proposal will be requested from those proposers who are selected for negotiation in response to this CAN, that a very minimal reference to the type of E/PO project to flow from the research being proposed will be required in the “Project Description” section of each proposal?

ANSWER:

As stated in Appendix A of the CAN, Education and Public Outreach (E/PO) activities, although a priority of the HTCI program, will be solicited separately from those offerors whose research proposals have already been selected for negotiation. No discussion of potential E/PO activities is required to be included in the “Project Description” section of an HTCI CAN proposal at this time.

6. QUESTION

Does NASA require “model cooperative agreements” to be included in the proposal for each category of activity which the proposer submits a proposal? If so, where should these model agreements be inserted in the proposal? If “model cooperative agreements” are not required to be submitted, should the proposer include agreement concerns with regard to terms and conditions as noted in the Code of Federal Regulations in the proposal transmittal letter?

ANSWER:

The general answer to this question is: No. NASA does not require “model cooperative agreements” to be included in a proposal to the HTCI CAN. If an offeror wishes to express a concern or take exception to any standard provision for NASA Cooperative Agreements, expressing this in the proposal transmittal letter is an acceptable approach to avoid potential delays in proceeding with the award if a proposal is selected.

7. QUESTION

May the proposer agree only to provide cost matching for the first twelve months or less of a project, even though the project is constructed to extend past the period of time for which cost matching is now available, since; like the Government, the availability for future matching funds by the proposer is not certain at the time of the proposal submission?

We believe this would be acceptable since cooperative agreements are not purchase contracts and the agreement can be terminated by either party prior to the end of the term of the agreement.

Therefore, can periods past the first twelve months (or whatever time period the proposer is able to fund a cost match at time of proposal submission) be contingent on whether the proposer funds are available to conclude the project and can such a condition be a condition included in the cooperative agreement?

ANSWER:

A proposal in response to the HTCI CAN should indicate proposed cost-sharing for the duration of the cooperative agreement (up to 24 months). However, the selection of the proposal plus the successful negotiation of a resulting cooperative agreement constitutes a commitment on the part of both parties only to the extent that progress is made according planned payment milestones and that funds are available.

To restate the point: during implementation, continuation of an HTCI project beyond the “next” payment milestone is contingent on progress, as well as the availability of either government or non-government cost-sharing resources. Lack of available resources on the part of either the government or the non-government offeror could be used as grounds to terminate the cooperative R&D activity before the originally planned end of the project; such a stipulation is inherent in the cooperative agreement.

See 14CFR1274.922 for additional information.

8. QUESTION

Concerning Appendix A, Page A-7, Paragraph 7 and Appendix B, Page B-6, Paragraph 2.2.3

– Reference the following language included in the CAN paragraph: “Where proposed collaboration with NASA includes the use of unique assets (e.g., use of specific facilities), a Letter(s) of Commitment from the appropriate NASA Center(s) must be included in the proposal submission (see Appendix B)” Is it correct to assume from the aforesaid wording that if no “unique assets” are involved in the work contemplated to be accomplished by NASA Center(s) personnel, the lack of a Letter of Commitment from the NASA Center(s) would not automatically make the proposer’s proposal non-compliant, as the Appendix B language on page B-6 is not of a mandatory nature?

ANSWER:

This question was addressed during the February 9th, 2001, HTCI pre-proposal conference; as stated during the conference:

- Offerors are required to plan on a collaborative R&D activity with NASA
- The proposal is required indicate how the collaboration will be done, including the NASA Center
- The offeror should obtain a Letter of Commitment from the appropriate Center(s)
- If the offeror submits a proposal without the requisite Letter of Commitment, then he or she is taking a RISK that the proposal may be found to be not viable during the evaluation process
 - Center might not be able to support
 - Costs of the Center support may not be consistent with Program policies or overall proposal scope

As stated, the lack of a Letter of Commitment would not automatically make the proposer’s proposal non-compliant, however the offeror will be taking a risk that the proposal may be found to be non viable during the evaluation process for reasons related to NASA’s collaboration on the proposed projected.

9. QUESTION

Suppose that a laboratory of another Agency of the US Government wishes to propose as a lead organization to the HTCI CAN with only NASA Field Center partnership. Can such an organization submit a proposal under these circumstances, and to what extent can such a laboratory of another Agency receive NASA funding in return for leveraging its own funding.

ANSWER:

As specified during the February 9th, 2001, HTCI Pre-Proposal Conference, in general government civil service personnel salaries, travel and related charges may not be funded from HTCI resources. However, non-civil service costs, such as materials, facilities charges, etc., may be funded. Also, any support contractor labor costs associated with the proposal may be funded (provided that those charges are associated with services (e.g., operating a facility) and not with the intellectual conduct of the R&D activity).

10. QUESTION

During the HTCI CAN Pre-Proposal conference on February 9th, 2001, a question was raised regarding intellectual property used in a project by a for-profit organization (since it does not count as cost share) would be retained 100% by for-profit organization.

ANSWER:

“Rights in data” either brought to a project or produced in the performance of the project are covered in detailed in 14CFR1274.905. Please refer to 14CFR1274.905 for this information.

11. QUESTION

During the HTCI CAN Pre-Proposal conference on February 9th, 2001, a question was raised regarding the use of software as a resource for purposes of cost-sharing.

ANSWER:

The answer to this question is yes: software may be used as a resource for purposes of cost-sharing – but only to the extent that the licencing value of the software may be reasonably determined. Note that valuation could be an issue. Also note that such software must be the result of allowable resources (for example, past NASA funding should not have been used exclusively to develop the software).

During the meeting, a preliminary answer of “no” was provided in response to this question; that preliminary answer is herein corrected.

12. QUESTION

During the HTCI CAN Pre-Proposal conference on February 9th, 2001, a question was raised regarding the use of “current year IR&D” as a contribution to cost-sharing.

ANSWER:

The general answer given at the meeting was correct.

To clarify: no pre-cooperative agreement costs (including IR&D) are allowable as cost-sharing. Costs contributed by the for-profit organization in the performance of the project (after the agreement) may be allocated as IR&D.

13. QUESTION

During the HTCI CAN Pre-Proposal conference on February 9th, 2001, a question was raised regarding the appropriateness of using a contract as the financial vehicle for funds transfer between the lead and supporting member (or members) of a proposed team.

ANSWER:

The general answer given at the meeting was correct.

To clarify: conceptually, the appropriate financial instrument in the case of transfer of funds between a principal investigator and another team member is a “sub-agreement” (not a contract) as defined in the articles of collaboration to achieve the project. However the use of contract for this purpose is not precluded so long as the resulting relationship fulfils the objectives of the HTCI (including cost-sharing).

Note that this relationship is distinct from the purchase of goods or services using a contractual relationship (as discussed during the February 9th, 2001, meeting).

14. QUESTION

During the HTCI CAN Pre-Proposal conference on February 9th, 2001, the subject of retention of ownership of hardware resulting from a project was discussed.

ANSWER:

The general answer given at the meeting was correct with respect to for-profit organizations; the following clarification applies to non-profit organizations.

To clarify: NASA policy is that non-profit organizations and educational institutions retain title to tangible property acquired in the implementation of a project such as those envisioned to result from the HTCI CAN. For further information, refer to 14CFR1260.27.

15. QUESTION

If a proposal addresses two areas as specified in Appendix C of the HTCI CAN (e.g., Category 1, systems studies, and Category 2, research and technology), what will be limit on total NASA funding for the proposed project? Will it be the lower of the two category limits? The higher of the two? Or the sum of the two category limits?

ANSWER:

Each proposal should address no more than one category, as defined in Appendix C of the CAN; the upper limit for that category would then apply. Proposals within category 2, enabling research and technology, are recommended (see Appendix C) to address no more than one or two themes within the category. Note that in no circumstance will the total government funding for any one project exceed the limits specified in Appendix C.

16. QUESTION

Who will own the results of an HTCI project? NASA? Or will the results be divided among the participants based on their contribution?

ANSWER:

As cited during the February 9th, 2001, briefing, in the case of for-profit organizations, title to tangible property acquired in the implementation of an HTCI project will be divided among the participants based on their contribution; please see the posted transcript of the meeting for additional information.

In the case of non-profit organization, NASA policy is that non-profit organizations and educational institutions retain title to tangible property acquired in the implementation of a project such as those envisioned to result from the HTCI CAN. For further information, refer to 14CFR1260.27.

In the case of intellectual property resulting from the implementation of an HTCI project by a non-profit organizations see the provisions of 14 CFR1260.28 and 14CFR1260.30.

In the case of intellectual property resulting from the implementation of an HTCI project by a for-profit organizations see the provisions of 14 CFR1274.905, 14 CFR1274.911, 14 CFR1274.912, 14 CFR1274.913, and 14 CFR1274.914.

Also, disposition among non-NASA team members of tangible or intellectual property resulting from the implementation of an HTCI project should be defined in the articles of collaboration.

17. QUESTION

Will there be any cost reporting requirements to NASA?

ANSWER:

In general, the answer is yes: there are cost reporting requirements under the HTCI CAN, just as there are for any expenditure of government funds. However, NASA does not require routine cost-reporting during implementation of cooperative agreements (consistent with the citations listed below).

For information on requirements applicable to for-profit organizations, see 14CFR 1274.908 and 14CFR 1274.932.

For information on requirements applicable to non-profit organizations, see 14CFR 1260.26 and 14CFR 1260.75.

Also, general HTCI reporting requirements are stated in the CAN, Appendix A, Section 6.

18. QUESTION

Will there be a billing schedule or will HTCI funds be distributed only at the end of the project?

ANSWER:

Cooperative Agreement projects require the identification and implementation of a series of payment milestones during the conduct of the effort. Depending on implementation, government funds will be distributed to reimburse expended project funds following the successful accomplishment of each payment milestone.

For additional information, see 14CFR1274, including in particular 14CFR1274.202 and 14CFR1274.908.

19. QUESTION

In the case where foreign funding for foreign participation is sought through a simultaneous proposal submission in response to a related and/or similar foreign solicitation, would linkage of these submissions (i.e., foreign submission and NASA CAN submission) be sufficient to satisfy the requirement for foreign Agency participation (see Appendix A, page 5, of the CAN), where selection of the foreign submission is contingent upon selection under the HEDS CAN? (In other words, is the requirement met if an anticipated other government announcement of opportunity (AO) permits responses to “foreign” AO’s such as the HTCI CAN?)

ANSWER:

The answer is yes; this approach is acceptable, assuming that appropriate information considering the foreign funding opportunity is provided along with the submission to the HTCI CAN. No cooperative agreement will be result, however, until and unless success in the non-NASA solicitation and availability of appropriate funds is demonstrated.

20. QUESTION

In the case where a bidding consortium includes a US commercial entity which is the wholly-owned subsidiary of a foreign parent commercial entity that is also part of the bidding consortium, and where the parent is funded via allowable foreign sources, can this foreign funding be used as cost-sharing for the US subsidiary of the foreign parent organization?

ANSWER:

The answer to this specific question is: yes. In general, in the case of a wholly-owned subsidiary of a for-profit organization, the allowable cost-sharing must still be 50% or more of the total project participation at the for-profit organization. However, in this case, the recipient and the wholly-owned subsidiary may contribute the allowable cost-sharing resources in any proportion they may propose, consistent with the provisions of 14CFR1274.